

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re Groupon, Inc. Securities
Litigation

Master File No. 12 C 2450

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

Hon. Charles R. Norgle

**DEFENDANTS' JOINT MOTION REQUESTING
THE COURT TO CONSIDER THEIR RESPONSES TO
PLAINTIFF'S SURREPLY WHEN ADJUDICATING THEIR MOTIONS TO DISMISS**

The Groupon Defendants and the Underwriter Defendants (collectively, "Defendants"),¹ by their attorneys, respectfully request that the Court consider the substantive arguments in their responses to Plaintiff's surreply when adjudicating Defendants' motions to dismiss Plaintiff's Consolidated Amended Class Action Complaint. In support of this motion, Defendants state as follows:

1. Plaintiff filed his Consolidated Amended Class Action Complaint (Doc. #125, the "CAC"), on October 29, 2012.
2. Pursuant to the Court's scheduling order, Defendants filed their respective motions to dismiss the CAC on January 18, 2013 (Doc. #s 131 and 134, the "Motions to Dismiss"), Plaintiff filed his brief in opposition to the Motions to Dismiss on March 19,

¹ The Groupon Defendants include Groupon Inc., Jason Child, Joseph M. Del Preto, Kevin Efrusy, Eric P. Lefkowsky, Theodore J. Leonsis, Andrew D. Mason, and Howard Schultz. The Underwriter Defendants include Morgan Stanley & Co. LLC, Goldman, Sachs & Co., and Credit Suisse Securities (USA) LLC.

2013 (Doc. #138), and Defendants filed their replies in further support of their Motions to Dismiss on April 22, 2013 (Doc. #s 139 and 140).

3. On April 26, 2013, Plaintiff filed a motion requesting leave to file *instantly* a surreply in further opposition to the Motions to Dismiss (Doc. #141, the “Motion for Leave to File Surreply”), which attached as an exhibit a proposed surreply (Doc. #141-1, the “Surreply”). Plaintiff’s Motion for Leave to File Surreply was noticed to be presented to the Court on May 3, 2013 (the “Presentment Date”).

4. On May 1, 2013, Defendants filed responses in opposition to Plaintiff’s Motion for Leave to File Surreply. The Groupon Defendants’ response in opposition to the Motion for Leave to File Surreply (Doc. #143, the “Surreply Opposition”) included pertinent authority supporting Defendants’ argument that the Court should not grant Plaintiff’s Motion for Leave to File Surreply as well as an exhibit containing the Groupon Defendants’ substantive rebuttals to the Surreply’s arguments (Doc. #143-1, the “Surreply Rebuttal”). Also on May 1, 2013, the Underwriter Defendants joined in the Groupon Defendants’ opposition to the Motion for Leave to File Surreply and responded to Plaintiff’s sole argument unique to the Underwriter Defendants (Doc. #144, the “Joinder”). Pursuant to local rule, Defendants delivered courtesy copies of the Surreply Opposition, the Surreply Rebuttal, and the Joinder (collectively, the “Surreply Responses”) to the Court’s chambers the following day, on May 2, 2013.

5. In a Minute Order dated May 2, 2013 (Doc. #145), the Court granted Plaintiff’s Motion for Leave to File Surreply and informed the parties that their appearance before the Court was not required on the Presentment Date. The Minute Order did not reference the Surreply Responses and it did not indicate whether the Court

would consider those documents in adjudicating Defendants' pending Motions to Dismiss.

6. Defendants believe the Court would benefit from considering the Surreply Responses in adjudicating their respective Motions to Dismiss.

WHEREFORE, Defendants respectfully request that the Court consider the substantive arguments presented in their Surreply Responses (Doc. #s 143, 143-1, and 144) in adjudicating their Motions to Dismiss (Doc. #s 131 and 134) and that the Surreply Responses be included in the record supporting Defendants' Motions to Dismiss.

Dated: May 6, 2013

Respectfully submitted,

Groupon, Inc., Jason Child, Joseph M. Del Preto,
Kevin Efrusy, Eric P. Lefkofsky, Theodore J.
Leonsis, Andrew D. Mason, and Howard Schultz

Morgan Stanley & Co. LLC, Goldman,
Sachs & Co., and Credit Suisse Securities
(USA) LLC

By: /s/ Howard S. Suskin
One of Their Attorneys

By: /s/ Kevin B. Duff (with consent)
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